

# **Defence by the defence counsel in the trial**

## **Abstract**

The main aim of the thesis is the defendant's right of defence, which applies throughout the criminal proceedings in the form of formal and material defence. In the thesis, the emphasis is placed on the defense counsel of the accused, especially his role in the trial.

The author of the thesis tries to define the rights and obligations of the defense counsel in a factual and concise way so that it is clear when the law is exercised and when it is misused and when the role of the defence counsel is misunderstood. The thesis is thus very up-to-date and clearly beneficial for practitioners in the field as it is evident from the review of disciplinary decisions of the Czech Bar Association that the practice still raises many problems in the field of defense as well as the rights and duties of the defence counsel.

The thesis is divided into two parts, the first part of the work generally discusses the bases of the rights of the defense and the position of the defense counsel in criminal proceedings, while the second part focuses on the specific features of the defence in the trial.

The first chapter of the thesis closely analyses the right of the accused to defense in the context of fundamental human rights and freedoms with reference to national and international sources of law. The right of the accused to a fair trial is also discussed in this section, as the right to defend and to have a defence counsel is an essential part.

The second chapter is introduced by a short historical excursion mapping the development of the legal regulation of the defence counsel institute. The author deals in detail with the applicable legislation and all aspects of representation by defence counsel in the criminal proceedings. With regard to the importance of securing the rights of the defense, the case-law is cited and the chapter is concluded with an insight into the Slovak legislation. The third chapter of the thesis focuses on the relationship of the defence counsel with the accused, respectively the defence counsel with the client, with an emphasis on the specifics of this relationship and with references to current problems in the practice.

The fourth and fifth chapter form a whole dealing with the trial from preparation, through the main stage of substantiation up to its end. The purpose of this part of the thesis is to point out the importance of the role of the defence counsel in the judicial phase of the proceedings and to draw attention to the elements of defense at a crucial stage of the criminal proceedings. As well here, the case law of Czech courts is widely quoted.

The aim of the thesis is to bring a comprehensive view of the defense by the defense counsel in the trial in the context of the entire criminal proceedings and especially to highlight the key aspects of the defense or shortcomings in the applicable legislation. For this purpose, the findings were drawn from both professional monographs and professional articles or publications of conference speeches, the authors of which are often advocates-defence counsels themselves. At the end of the thesis, the author, with regard to the upcoming recodification of the criminal law procedure, would like to introduce several proposals *de lege ferenda*, which arose from the study of the issue.

### **Key words**

the right of defence - defence counsel - trial